theory. 57 CENT. L. J. 343; 2 JURIDICAL SOCIETY PAPERS, 40; 20 HARV. L. REV. 589. The only sound objection to the rule of the principal case is a practical one, in that it differs from that of the Federal Bankruptcy Act which adopts the common-law or English rule. Act July 1, 1898, c. 541, sec. 5, 30 Stat. 547. Thus the rule of distribution would depend upon whether the estates were being settled in the state or the federal court. This objection was thought fatal in England under similar circumstances. *Grey* v. *Chiswell*, 9 Ves. 118. But since the principal case is a step toward establishing a theory of partnership in accordance with the true facts and at the same time achieves a more just result, it would seem worthy of being followed in spite of the conflict it may create.

PATENTS — INFRINGEMENTS — RIGHT OF SUB-PURCHASER TO DISREGARD NOTICE LIMITING RESALE PRICE. — The purchaser of a patented article from a jobber disregarded a notice, put on the article by the patentee, to the effect that it was not to be resold below a certain price. *Held*, that there was no infringement of the patent. *Bauer & Cie* v. *O'Donnell*, 33 Sup. Ct. Rep. 616.

This case is commented upon in this issue of the REVIEW on p. 73.

POST OFFICE — USE OF MAILS FOR FRAUDULENT PURPOSE — WHETHER ACTUAL INTENT TO DEFRAUD ADDRESSEE IS REQUIRED. — The defendant sent through the mails a catalogue advertising and soliciting orders for loaded dice and marked cards. He was indicted under a statute providing punishment for anyone who, having devised a scheme to defraud, should for the purpose of executing such scheme place any letter or advertisement in the post office. Act March 4, 1909, c. 321; PEN. CODE, § 215; 35 STAT. AT LARGE, 1130. *Held*, that a demurrer to the indictment should be sustained. *Stockton* v. *United States*, 205 Fed. 462 (C. C. A., Seventh Circ.).

The court argues that the legislature did not intend the general language of the above section to cover the defendant's offense, because an amendment to the statute as originally framed has made punishable any scheme to use the mails for disposing of counterfeit money or certain other specified artifices which would enable the purchaser to commit a fraud. But an order by mail to sell counterfeit money was punishable under the statute before amendment. *United States* v. *Jones*, 10 Fed. 469. In a case to the contrary, relied on by the court in the principal case, the decision turned upon a defect in the indictment, which charged a scheme to defraud the man who bought the counterfeits, instead of, as was the case, those who might deal with him. *Milby* v. *United States*, 109 Fed. 638. See *Milby* v. *United States*, 120 Fed. 1, 2. The amendment did not curtail the original statute, but simplified the course of conviction for the specified offenses. *Streep* v. *United States*, 160 U. S. 128; *Culp* v. *United States*, 82 Fed. 990. See *Milby* v. *United States*, 120 Fed. 1, 4. Since it is impossible to conceive that the vendor in the principal case had no intention to defraud, the result seems contrary to reason as well as authority.

RECEIVERS — EFFECT OF RECEIVERSHIP ON RELATION OF AGENTS TO COMPANY. — The plaintiff sued the defendant railroad for injuries received before the railroad passed into the hands of receivers. A statute provided that in actions against railroads, process could be served on any of their station or ticket agents. After the receivership, process was served by the plaintiff on a station agent, an employee of the railroad retained by the receiver. *Held*, that the service was valid against the railroad. *Ennest* v. *Pere Marquette R. Co.*, 142 N. W. 567 (Mich.).

The appointment of a receiver might have one of two possible effects upon the relation of employees to the railroad. They may be held to be agents of the receiver only. *Cain* v. *Seaboard, etc. Ry.*, 7 Georgia App. 461, 67 S. E. 127.

Or they may continue agents of the company so that service upon an employee is effective to bind the company. *Faltiska* v. *New York, L. E. & W. R. Co.*, 12 Misc. N. Y. 478, 33 N. Y. Supp. 679, affirmed 151 N. Y. 650, 46 N. E. 1146. That a receivership does not dissolve a corporation is well settled. See *Kincaid* v. *Dwinelle*, 59 N. Y. 548; *City Water Co.* v. *State*, 88 Tex. 600, 32 S. W. 1033. Stockholders may hold elections during the receivership. *State ex rel. Atty. Gen.* v. *Merchant*, 37 Ohio St. 251. The corporation itself must conform to police regulations enacted for public protection. *Ohio & M. R. R. Co.* v. *Russell*, 115 Ill. 52, 3 N. E. 561. It is liable for torts committed before receivership. *Decker* v. *Gardner*, 124 N. Y. 334, 26 N. E. 814. The receiver's possession of the property is but temporary. *Robinson* v. *Atlantic & G. W. Ry. Co.*, 66 Pa. St. 160. The Michigan court seems correct in finding no inconsistency in an agency for the railroad while employees are under the temporary management of the receiver. In the minds of its men and the public at large the road still operates; receivership signifies at most a change in management. Service on such agent meets the test of bringing notice of the suit to the company. See *Coler* v. *Pittsburgh Bridge Co.*, 84 Hun 285, 286, 32 N. Y. Supp. 439, 440.

SELF-DEFENSE — NECESSITY CREATED BY DEFENDANT — GOING ARMED NEAR ONE WHO HAS THREATENED. — In a trial for homicide, the court refused to instruct the jury that the defendant would not be deprived of his right of self-defense although he knew before entering the house of a mutual friend, where the encounter took place, that he would likely meet the deceased there, and that the deceased would likely attack him. *Held*, that the instruction was properly refused. *Valentine* v. *State*, 159 S. W. 26 (Ark.).

When a defendant enters the presence of one who has threatened him and being attacked kills the threatener, it is not clear on authority under what circumstances he retains his right of self-defense. Where the defendant went into the vicinity of the deceased on a mere pretext, knowing and intending that his presence alone would cause an attack, the excuse has been denied. *State* v. *Neely*, 20 Ia. 108; *State* v. *Hawkins*, 18 Ore. 476, 23 Pac. 475. See Y. B. 21 H. 7, 39, pl. 50. But a man may, if necessary, arm himself and go about his lawful business, in spite of the probability of thus causing an attempt upon his life, and yet be excused for killing in case of necessity. *People* v. *Batchelder*, 27 Cal. 69; *State* v. *Evans*, 124 Mo. 397, 28 S. W. 8. The excuse may well depend on the reason for the defendant's presence at the place. For the welfare of the community it is essential that a man should be free to come and go while concerned with earning his livelihood, but it is not so important that he should be protected in the pursuit of pleasure. See note, 8 HARV. L. REV. 355. The principal case is correct on the ground that the defendant may have been engaged in the pursuit of no legitimate interest to which the law affords such protection. A previous Arkansas case has a contrary tendency. *Nash* v. *State*, 73 Ark. 399, 84 S. W. 497.

SPECIFIC PERFORMANCE — LEGAL CONSEQUENCES OF RIGHT OF SPECIFIC PERFORMANCE — RIGHT OF PERSONAL REPRESENTATIVE OF VENDOR TO PURCHASE MONEY AFTER OPTION TO PURCHASE. — The owner of land leased it for a term of years giving an option to purchase. After his death the option was exercised. *Held*, that the general legatee, and not the heirs, are entitled to the proceeds. *McCutcheon's Estate*, 61 Pitts. Leg. J. 315 (Allegheny Co., 1913). See NOTES, p. 79.

TELEGRAPH AND TELEPHONE COMPANIES — CONTRACTS AND STIPULATIONS LIMITING LIABILITY — UNREPEATED MESSAGES. — A mistake due to the negligence of an agent of the defendant occurred in an unrepeated message sent under a stipulation limiting liability to the amount of the toll charge.